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**COPY MAILED**

**AUG 2 5 2005**

**OFFICE OF PETITIONS**

In re Application of  
Riffee  
Application No. 08/800,574  
Filed: February 18, 1997  
For: NARROWBAND VIDEO CODEC

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:  
: Corrected Letter Regarding  
: Patent Term Extension  
:  
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The above-identified application has been forwarded to the undersigned for review of whether the above-identified application is eligible for a patent term extension under 35 U.S.C. 154(b). See 35 U.S.C. § 154(b)<sup>1</sup> and 37 C.F.R. § 1.701. The Notice of Allowance and Issue Fee Due mailed on July 12, 2005, incorrectly indicated that the patent to issue from the application 08/800,574 is eligible for a 946-day extension.

Issue of the above-identified application was delayed due to appellate review by the Board of Appeals and Interferences, and the above-identified application has been allowed after a decision of the Board reversing an adverse determination of patentability.

A Notice of Appeal was filed in the above-identified application on August 14, 2002. On March 16, 2005, the Board of Appeals and Interferences reversed the decision of the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal of an adverse decision of patentability, the patent to issue from the application is entitled to an extension of the patent term. The period of delay in the above-identified application is the period beginning on August 14, 2002, the date that the Notice of Appeal was filed, and ending on March 16, 2005, the date of the final decision in favor of the applicant. Three years after the filing date of the application is February 18, 2000. Accordingly, the period of extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. Additionally, the application was abandoned on February 1, 2003, for

<sup>1</sup>35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the existing patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

failure to timely file a supplemental appeal brief on January 41, 2003 in response to the Notification of Non-Compliance with 37 CFR 1.192(c) mailed on December 21, 2002. A petition to revive under 37 CFR 1.137(b) was filed on May 30, 2003 and the petition was granted on June 9, 2003.

Accordingly, the period of extension is required to be reduced pursuant to 37 CFR 1.701(d)(2) by the amount of time during the period of appellate review in which the appellant did not act with due diligence (from February 1, 2003 until June 9, 2003, 129 days). As a result, the period of extension is **817 days**, Not 946 days, as printed on the Notice of Allowance, which is the period from August 14, 2002 to March 16, 2005, (which is 946 days) reduced by 129 days including the beginning and end dates.

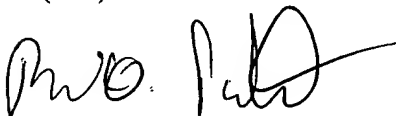
After mailing of this decision, the above-identified application will be returned to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by **817 days**.

Further correspondence with respect to this matter should be addressed as follows:

By fax:           Attn: Patent Term Extension Reply  
                              (571) 273-8300

By mail:           Mail Stop Petitions  
                              Commissioner for Patents  
                              P.O. Box 1450  
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Telephone inquiries with regard to this communication should be directed to the undersigned at (571) 272-7709.



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